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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,413	02/06/2004	Christiaan H.P. Dirks	121640-40308234	2078
909	7590	03/20/2006		EXAMINER
PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				REIMERS, ANNETTE R
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,413	DIRKS ET AL.	
	Examiner Annette R. Reimers	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6 and 8-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Barker Jr. et al. (U.S. Patent Number 5,540,703).

Barker Jr. et al. disclose a various embodiments of a method for tying together at least two bone parts, using a polymer fiber surgical cable, wherein the cable which is a closed loop flat braided high performance, high molecular weight polyethylene fiber of finite length (see column 3, lines 32-35), having two end parts, 28 and 30, around at least part of the objects to be tied together, urging the objects together by exerting a force on the two end parts and locking the cable against the influence of forces acting counter to the exerted force, wherein the exerted force is a torsion force, and the exerted force comprises a drawing force and a twisting force (see various embodiments of figures 7-17 and figures 1, 3-4 and 19-22).

The cable is twisted having an eye at one of the end parts and the torsion force is exerted on the cable through the eye (see figures 23-29). Furthermore, the cable is a loop of fibers that has been closed by an air splice, which is folded around the bone parts forming two returning ends in the cable as end parts (see figures 23-39).

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Moreover, the torsion force is exerted on the cable through the returning ends and on a twisting device running through the return ends (see figures 23-39). The two end parts are connected with a knot and a torsion force is exerted on the cable below the knot (see figures 19-22).

Claims 1, 3-7, 11-15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by McLeod et al. (U.S. Patent Number 5,800,543).

McLeod et al. disclose a method for tying together at least two bone parts, using a surgical cable, wherein the cable which is a closed loop flat braided high performance, high molecular weight polymer fiber of finite length, having two end parts around at least part of the objects to be tied together, urging the objects together by exerting a force on the two end parts and locking the cable against the influence of forces acting counter to the exerted force, wherein the exerted force is a torsion force, and the exerted force comprises a drawing force and a twisting force (see figure 10). The cable has an eye at both ends and the torsion force is exerted on a twisting device, 25 or 33, running through the eyes (see figures 3, 9 and 10). In addition, the two end parts are connected with a knot and a torsion force is exerted on the cable below the knot (see figures 9 and 10).

#### ***Response to Arguments***

Applicant's arguments filed on October 14, 2005 have been fully considered, but they are not persuasive. Regarding the Barker reference, examiner respectfully disagrees with applicant that the reference is directed to bones that have been previously compressed, since the method is directed to connecting bone, and the cable

is used to provide a compressive force (see column 3, lines 12-15, and column 4, lines 30-33). In addition, the cable is urging the objects together (see figures 1, 3-4 and 19-22). Regarding the McLeod reference, McLeod teaches securing bone and the cable is urging and locking the objects together (see column 1, lines 15-18, and figure 10).

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER

